

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of Application of	)	
	)	
CELTRONIX TELEMETRY, INC.	)	FCC File No. 0000306557
	)	
For Special Temporary Authority to Operate 218-	)	
219 MHz Service Network in the Norfolk-	)	
Virginia Beach Metropolitan Statistical Area	)	
	)	

**ORDER ON RECONSIDERATION**

**Adopted: August 7, 2002**

**Released: August 9, 2002**

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. *Introduction.* On April 25, 2002, the Public Safety and Private Wireless Division (Division) of the Wireless Telecommunications Bureau dismissed an Application for Review<sup>1</sup> filed by Celtronix Telemetry on November 5, 2001 as untimely.<sup>2</sup> On May 24, 2002, Celtronix filed a petition requesting reconsideration of the dismissal.<sup>3</sup> For the reasons set forth below, we dismiss the Celtronix 2002 Petition as moot and terminate the proceeding.

2. *Background.* On January 18, 1995, Celtronix received an authorization to operate Station KIVD0054, a 218-219 MHz Service system in the Norfolk-Virginia Beach Metropolitan Statistical Area. In 1996, Celtronix demonstrated and then constructed a vehicle tracking system.<sup>4</sup> Celtronix used Station KIVD0054 to offer a low-cost vehicle tracking service.<sup>5</sup>

3. In 1999, the Commission adopted an installment payment restructuring plan for the 218-219 MHz Service.<sup>6</sup> Under the terms of the restructuring plan, an eligible licensee could elect: (1) to retain its license (either by resuming the installment payments it agreed to at the time it obtained its license (reamortization and resumption) or by paying off the existing balance due on the license (prepayment)); or (2) "amnesty," under which the eligible licensee returns the license to the Commission in exchange for

<sup>1</sup> Celtronix Telemetry, Inc., Application for Review (filed Nov. 5, 2001) (Application for Review).

<sup>2</sup> See Celtronix Telemetry, Inc., *Order*, 17 FCC Rcd 7343 (WTB PSPWD 2002) (*April 25 Order*).

<sup>3</sup> See Celtronix Telemetry, Inc., Petition for Reconsideration (filed May 24, 2002) (Celtronix 2002 Petition).

<sup>4</sup> Celtronix Telemetry, Inc., Petition for Reconsideration (filed Mar. 2, 2001) at 2 (Celtronix 2001 Petition).

<sup>5</sup> *Id.* at 4.

<sup>6</sup> Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, *Report and Order and Memorandum Opinion and Order*, WT Docket 98-169, 15 FCC Rcd 1497 (1999).

debt forgiveness and a refund of certain payments.<sup>7</sup> Pursuant to this restructuring plan, Celtronix was deemed to be an eligible licensee<sup>8</sup> and elected the amnesty option.<sup>9</sup> As a consequence of its amnesty election, Celtronix was required to cease operation by February 1, 2001. On December 26, 2000, Celtronix requested a Special Temporary Authorization (STA) effective February 1, 2001, and lasting for 180 days, “to permit continued operation of its 218-219 MHz Service system” in the Norfolk-Virginia Beach MSA.<sup>10</sup> On January 31, 2001, the Division granted a limited, sixty-day STA.<sup>11</sup>

4. On March 2, 2001, Celtronix filed a petition requesting reconsideration of the grant of a sixty-day STA and requested an extension of the STA with conditions or, alternatively, conversion of the STA to interim developmental authority with the same conditions.<sup>12</sup> The Division extended the STA for an additional thirty days pending resolution of Celtronix’s Petition.<sup>13</sup> On April 12, 2001, Celtronix filed a supplement to its Petition in which it stated that it should be granted either (1) an extension of the STA; (2) interim operating authority; (3) secondary authority pursuant to Part 90 of the Commission’s Rules; or (4) developmental authority.<sup>14</sup> On September 19, 2001, the Division denied Celtronix’s request for an extension of the STA, interim operating authority and developmental authority.<sup>15</sup> The Division chose not to address Celtronix’s arguments for secondary authority in the *September 19, 2001 Order on Reconsideration*<sup>16</sup> because the issue was addressed in a separate *Order on Reconsideration* released on August 31, 2001.<sup>17</sup> In the *August 31 Order on Reconsideration*, the Division concluded that Celtronix had demonstrated that it was eligible to operate its system in the 218-219 MHz Band on a secondary basis pursuant to Part 90 of the Commission’s Rules.<sup>18</sup> Accordingly, the Division forwarded Celtronix’s

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<sup>7</sup> *Id.*

<sup>8</sup> See Wireless Telecommunications Bureau Announces Revised Election Date (January 31, 2001) and Amended Eligibility List for 218-219 MHz Service, *Public Notice*, 16 FCC Rcd 5937 (WTB Jan. 3, 2001).

<sup>9</sup> See Celtronix Telemetry, Inc., Election Notice Submission (filed Jan. 31, 2001); see also Wireless Telecommunications Bureau Announces the Election for the 218-219 MHz Service, *Public Notice*, 16 FCC Rcd 5901 (WTB Mar. 5, 2001).

<sup>10</sup> Celtronix STA Request, filed Dec. 26, 2000, at 1.

<sup>11</sup> Letter from D’wana Terry, Chief, Public Safety and Private Wireless Division to Richard S. Myers, President, Celtronix Telemetry, Inc. at 2 (dated Jan. 31, 2001).

<sup>12</sup> Celtronix 2001 Petition at 1.

<sup>13</sup> See Letter from Ramona Melson, Deputy Chief, Public Safety and Private Wireless Division to Richard S. Myers, President, Celtronix Telemetry, Inc. (dated Apr. 17, 2001).

<sup>14</sup> See Celtronix Telemetry, Inc., Supplement to Petition for Reconsideration (filed Apr. 12, 2001).

<sup>15</sup> See Celtronix Telemetry, Inc., *Order on Reconsideration*, 16 FCC Rcd 16614, 16621 ¶ 21 (*September 19 Order on Reconsideration*).

<sup>16</sup> *Id.* at 16620 ¶ 19.

<sup>17</sup> See Celtronix Telemetry, Inc., *Order on Reconsideration*, 16 FCC Rcd 15907 (WTB PSPWD 2001) (*August 31 Order on Reconsideration*).

<sup>18</sup> *Id.* at 15910 ¶ 8. See also 47 C.F.R. § 90.259.

application requesting authority to operate in the 218-219 MHz band on a secondary basis pursuant to Part 90 of the Commission's Rules to the Division's Licensing and Technical Analysis Branch (Branch) for processing.<sup>19</sup>

5. On November 5, 2001, Celtronix filed its Application for Review in which it requested the Commission's review of the Division's *September 19 Order on Reconsideration*.<sup>20</sup> On March 19, 2002, while the Application for Review was pending, the Branch granted Celtronix's Secondary Authority application.<sup>21</sup> On April 25, 2002, the Division dismissed the Application for Review as untimely under delegated authority pursuant to Section 0.331(c) of the Commission's Rules.<sup>22</sup> The Division also determined that the Application for Review was moot because Celtronix obtained the relief it requested when Celtronix was authorized to operate its system in the 218-219 MHz band on a secondary basis pursuant to Part 90 of the Commission's Rules.<sup>23</sup> On May 24, 2002, Celtronix filed the subject Petition.

6. *Discussion.* In the subject Petition, Celtronix requests reconsideration of the *April 25 Order* which dismissed Celtronix's Application for Review as untimely.<sup>24</sup> Celtronix was required to file the Application for Review no later than October 22, 2001, but the Commission's records show that the Application for Review was not filed until November 5, 2001.<sup>25</sup> Celtronix, however, contends that its Application for Review was delivered to the Commission on October 22, 2001.<sup>26</sup> In support of this contention, Celtronix submitted two exhibits - the declaration of Richard S. Myers,<sup>27</sup> the attorney who prepared the Application for Review, and records from the United Parcel Service,<sup>28</sup> the courier that purportedly delivered the item to the Commission. However, Celtronix also states in a letter attached to its Petition that it "does not wish to challenge the merits of the Order's conclusion that Celtronix's prior Application for Review is moot."<sup>29</sup>

7. Regardless of whether or not the Application for Review was timely filed, we believe that this matter has been satisfactorily resolved and the public interest has been served because Celtronix was provided the relief it sought in its original petition when it was granted authority to operate in the 218-219

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<sup>19</sup> FCC File No. D128959 (Secondary Authority application).

<sup>20</sup> See Application for Review.

<sup>21</sup> See Secondary Authority application.

<sup>22</sup> See *April 25 Order*, 17 FCC Rcd at 7345-7346 ¶¶ 5-6.

<sup>23</sup> *Id.* at 7346 ¶ 7.

<sup>24</sup> Celtronix 2002 Petition at 1.

<sup>25</sup> See *April 25 Order*, 17 FCC Rcd at 7345 ¶ 4.

<sup>26</sup> Celtronix 2002 Petition at 1.

<sup>27</sup> See Celtronix 2002 Petition, Attachment A: Declaration of Richard S. Myers.

<sup>28</sup> See Celtronix 2002 Petition, Attachment B: Delivery Notification, United Parcel Service.

<sup>29</sup> See Letter from Richard S. Myers, Celtronix Telemetry, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (dated May 24, 2002).

MHz band on a secondary basis pursuant to Part 90 of the Commission's Rules. Furthermore, in requesting reconsideration of the Division's decision to dismiss the Application for Review, Celtronix does not challenge the Division's conclusion that its Application for Review is moot.<sup>30</sup> Therefore, even if we concluded that the Application for Review was timely filed, Celtronix has accepted the Division's conclusion that the Application for Review is moot. We therefore believe that this proceeding has been satisfactorily resolved and does not merit further consideration. Accordingly, the Celtronix 2002 Petition will be dismissed and this proceeding will be terminated.

8. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i) and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the petition for reconsideration filed by Celtronix Telemetry on May 24, 2002 IS DISMISSED AS MOOT.

9. IT IS FURTHER ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), this proceeding IS TERMINATED.

10. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry  
Chief, Public Safety and Private Wireless Division  
Wireless Telecommunications Bureau

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<sup>30</sup> *Id.*